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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,745	06/29/2000	Stephen C. Tylley	00-018	7481

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EXAMINER

CAPRON, AARON J

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/606,745

Applicant(s)

TYLLEY ET AL.

Examiner

Aaron J. Capron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 10 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

MARK SAGER
PRIMARY EXAMINER

DETAILED ACTION

This is a response to the Amendment received on October 10, 2002, in which claims 1-6, 34-36, 39-43 and 45 were amended and claims 47-53 were cancelled. Claims 1-46 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,569,082) in view of Walker et al. (U.S. Patent No. 6,068,552; hereafter "Walker").

Kaye discloses a method of operating a computer lottery game, that includes the determination of an outcome amount associated with a total number of events (Destiny Code) and allocating the outcome amount among the total number of events, wherein the total number of events is greater than one (Figure 12), but does not disclose basing the reward on a parameter associated with a player. However, Walker discloses that players of a lottery game often have the option of selecting jackpots awarded as one lump sum or as payments over a number of years which allows the casinos to collect interest of the money over those years and also effectively lowers the payout when the time of money is taken into account (10:22-31). Further, it is notoriously well known that state run lotteries have had the option of allowing a player to select the option of a lump sum payment or multiple payments over many years. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to

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incorporate the feature of player selectable parameters as taught by Walker or as notoriously well known into Kaye's invention in order to allow casinos to lower the payouts when the time of money is taken into account.

Referring to claim 2, Kaye in view of Walker disclose that the parameter specified by the player comprise the total number of events (number of payouts, such as 20 payouts over 20 years).

Kaye in view of Walker discloses at least one of the features listed in each of the claims below, but does not teach all of the features listed in each of the claims below. However, these "untaught" features are equivalent to the features that are disclosed by Kaye in view of Walker. Referring to claim 3, Kaye in view of Walker disclose that the player can select a payout distribution preference by selecting one lump sum amount or a multiple amounts.

Referring to claim 4, Kaye discloses the parameter associated with the player includes player history information (10:32-44).

Referring to claims 5-7, Kaye discloses retrieving (7:10-23) and receiving (7:39-54) an indication of the parameter associated with the player.

Referring to claim 8, Kaye discloses that receiving is performed by the Internet (5:66 to 6:6).

Referring to claim 9, Kaye discloses determining includes receiving an indication of the outcome amount (3:46-54).

Referring to claim 10, Kaye discloses receiving the indication from the controller (3:4-15).

Referring to claim 11, Kaye discloses that receiving is performed by the Internet (5:66 to 6:6).

Referring to claim 12, Kaye discloses retrieving the stored indication of the outcome amount (3:4-21).

Referring to claim 13, Kaye discloses determining includes randomly generating the outcome amount (3:35-38).

Referring to claims 14-16, Kaye discloses that allocation is performed by a controller and a player device (5:9-26).

Referring to claim 17, Kaye discloses allocating includes selecting a subset of the total number of events and allocating the outcome amount among the subset of the total number of events (Figure 12 and 10:15-22).

Referring to claim 18, Kaye discloses determining a plurality of event outcomes based on the outcome amount and associating each of the event outcomes with one of the total number of events (Figure 12, block 244).

Referring to claim 19, Kaye discloses allocating is based on a stored outcome table or random process (Figure 12, block 244 and 10:15-22).

Referring to claim 20, Kaye discloses that determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being different than the total number of events (Figure 12 and 10:15-19).

Referring to claim 21, Kaye discloses that allocating the plurality of outcome amounts among the total number of events (Figure 2, Figure 12, and 4:38-39).

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Referring to claims 22-23, Kaye discloses determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being less than the total number of events (Figure 12).

Referring to claim 24, Kaye discloses determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being more than the total number of events (3:55-67).

Referring to claims 25-26, Kaye discloses an event payout amount(s) with at least one of the total number of events (Figure 12 and 10:15-22).

Referring to claim 27, Kaye discloses that at least one of the plurality of event payouts can comprise of a negative amount (Figure 10, block 198).

Referring to claim 28, Kaye discloses displaying the event payout amount to the player (5:9-23).

Referring to claim 29, Kaye discloses arranging for the player to provide payment of an amount based on a total wager amount (Figure 2), revealing the event payout amount to the player, and arranging for the player to receive payment of an amount associated with the event payout amount (5:9-23).

Referring to claim 30, Kaye discloses arranging for the player to provide payment of an amount and arranging for the player to receive payment of an amount associated with the outcome amount, wherein the outcome amount is based at least in part on the total wager amount and a random process (Figure 11). It is inherent to have the winning amount be based at least in part on the total wage amount.

Referring to claim 31, Kaye discloses a method that re-allocates the outcome amount among the total number of events (Figure 12).

Referring to claim 32, Kaye disclose a method that re-allocates the outcome amount among a subsequent total number of events, the subsequent total number of events being different than the total number of events (Figure 12 and 10:15-22).

Referring to claim 33, Kaye discloses that each of the total number of events is associated with an electronic representation of a scratch-off type instant game ticket (7:39-54).

Referring to claim 34, Kaye, as shown above, discloses arranging for a player to provide payment of an amount based on a total wager amount, determining the outcome amount, based on a parameter associated with the player, distributing the outcome amounts among a plurality of lottery tickets, revealing to the player the result associated with the lottery tickets and arranging for the player to receive payment of an amount.

Referring to claim 35, Kaye discloses arranging a player to provide payment to a total wager amount, receiving an indication of an outcome amount associated with an original number of tickets (ticket with Destiny Code), allocating the outcome amount among the original number of tickets, determining a modified number of tickets, reallocating the outcome amount among the number of tickets (Figure 12, block 242 and 244), revealing the lottery ticket amount to the player (disclosed above), and arranging for the player to receive payment of an amount associated with the lottery payout amount (disclosed above).

Claim 36-38 corresponds in scope to an apparatus set forth for use of the method listed in claims 1, 3-4 and 7 and is encompassed by use as set forth in the rejection above.

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Claim 39 corresponds in scope to a medium storing instructions set forth for use of the method listed in claim 1 and is encompassed by use as set forth in the rejection above.

Referring to claim 40, Kaye in view of Walker disclose a method for operating a gaming device that includes determining an outcome associated with the player based on a parameter associated with the player, allocating the outcome among a total number of events, and the outcome being an expected value.

Referring to claim 41, Kaye discloses a method for determining an outcome amount associated with a player and based on a parameter associated with a player, allocating the outcome amount over a representation of space (Adventure games or stories on 7:55-65).

Referring to claim 42, Kaye discloses arranging a player to provide a payment, transmitting an indication associated with the total wager amount to a controller, receiving an indication associated with a total payout amount from the controller, receiving from the player a total number of lottery events, based on parameter associated with the player, allocating the total payout amount among the total number of lottery events, revealing at least a portion of the total payout amount, and arranging for the player to receive the payment (Figures 11 and 12).

Referring to claim 43, Kaye discloses a method for determining an outcome amount associated with a player (10:32-43) and allocating the outcome amount among a total number of events (Figure 12).

Referring to claim 44, Kaye discloses that the total number of events can be lottery tickets (7:39-54).

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Claims 45-46 corresponds in scope to a method of facilitating game play set forth for use of the method listed in claims 1 and 33 and are encompassed by use as set forth in the rejection above.

Response to Arguments

Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Vazquez, Jr. et al (U.S. Patent No. 4,695,053) discloses gaming device having player selectable winning combinations.

Stupak et al. (U.S. Patent No. 5,851,147) discloses player-selected variable jackpot gaming method and device.

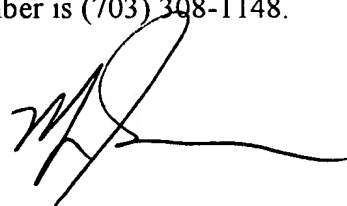
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc
December 12, 2002



MARK SAGER
PRIMARY EXAMINER